

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF VETERINARY MEDICINE

In the Matter of Mohammed
Shahidullah, D.V.M.
License No. 7978

RULING ON RESPONDENT'S MOTION TO
DISMISS, MOTION FOR SUMMARY
DISPOSITION, AND REQUEST TO HOLD
ONE DAY OF HEARING IN NEW ULM

The above-entitled matter is pending before Administrative Law Judge Barbara L. Neilson on the Motions for Dismissal and Summary Judgment filed by the Respondent, Mohammed Shahidullah, D.V.M., and his request to hold one day of the hearing in New Ulm, Minnesota. The record with respect to the motions closed on May 13, 1996.

Ann M. Offermann, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Complaint Review Committee (the "Committee"). Mohammed Shahidullah, D.V.M., 1132 Central Avenue West, St. Paul, Minnesota 55104, appeared on his own behalf, without benefit of counsel.

Based upon the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, IT IS HEREBY ORDERED as follows:

1. The Respondent's Motion to Dismiss is DENIED.
2. The Respondent's Motion for Summary Judgment is DENIED.
3. The Respondent's request to hold one day of hearing in New Ulm is DENIED.
4. By Friday, May 31, 1996, the Respondent shall file the original or a more legible copy of the Supplemental Witness List he previously filed by facsimile transmission on May 20, 1996, and serve a copy on counsel for the Committee.

Dated this _____ day of May, 1996.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

In the Notice of and Order for Hearing dated October 3, 1995, the Complaint Review Committee of the Minnesota Board of Veterinary Medicine alleges that Dr. Shahidullah "has engaged in a repeated pattern of unsanitary practices, substandard treatment, and other misconduct" and has "failed to cooperate with the Board's investigation." Notice of and Order for Hearing, ¶ 3. The Committee also alleges that Dr. Shahidullah practiced under a false or assumed name and that his mobile veterinary practice does not conform to prevailing standards of practice. *Id.*, ¶¶ 56-64. The Committee seeks to take disciplinary action with respect to Dr. Shahidullah's license to practice veterinary medicine.

At a prehearing conference held before the Administrative Law Judge on April 23, 1996, Dr. Shahidullah indicated an interest in filing one or more motions. The Judge ordered the briefing of the motions on an expedited basis in the hope that it would be possible to rule on them prior to the commencement of the hearing which was at that time scheduled to begin on May 14, 1996. The parties were contacted by the Judge on Tuesday, May 7, 1996, and asked to file any reply briefs regarding the motions by noon on Friday, May 10. Dr. Shahidullah called the Administrative Law Judge during the morning of Friday, May 10, and indicated that it would not be possible for him to file his reply briefs with respect to his Motion to Dismiss and Motion for Summary Disposition by noon that day. The Administrative Law Judge directed Dr. Shahidullah to file his reply briefs regarding these motions by 10:00 a.m. on Monday, May 13. Dr. Shahidullah complied with this directive.

Respondent's Motion to Dismiss

On April 29, 1996, Dr. Shahidullah filed a Motion to Dismiss in this matter based upon the ground of "prosecutorial misconduct." He alleges that the Board has failed or refused to comply with an Order issued by the Administrative Law Judge on March 22, 1996, compelling the Board to provide him with "copies of all tape recordings of Complaint Review Committee proceedings pertaining to him" and "handwritten notes taken by the Board, its investigators, or any person on the Board's behalf" First Prehearing Order, ¶¶ 5-6. Dr. Shahidullah contends that he has not received a full and accurate audiotape of the entire two-day meeting in which he and the Committee participated during January and February of 1994, and also maintains that he has not received copies of all of the handwritten notes taken by Dr. Joseph Glenn during the meeting. In support of his motion, Dr. Shahidullah asserts that he brought his own camcorder to record the two-day proceeding but was told by the Board that he would not be permitted to record the meeting. He indicates that the Committee assured him that he would be provided with a true copy of the tape recording made by the Committee. He further alleges that, near the end of the meeting, Dr. Glenn read a proposed resolution and stipulation from his handwritten notes. Dr. Shahidullah maintains that he accepted the resolution and recommendation read to him by Dr. Glenn and that the recommendation was then supposed to be transcribed as it was read to the tape recorder. Because, in his view, the written stipulation eventually provided to him by the Board was not an accurate transcription of the oral discussion during the meeting, Dr. Shahidullah refused to sign the stipulation. This contested case proceeding was initiated by the Committee approximately one year later.

Based upon his review of the tapes that have been provided to him in discovery in this matter, Dr. Shahidullah has concluded that certain favorable comments made during this portion of the two-day meeting and the summary of the terms of the stipulation orally agreed to

by the parties are missing from the copy of the tape recording provided to him. He has provided an unsworn letter of Mark Bowden, Owner/Manager of Audio by Design, indicating that it is possible for even an amateur to edit an audio tape from its original form by removing audio portions without leaving gaps in the tape. Dr. Shahidullah also points out that Dr. Glenn's handwritten notes pertaining to the meeting have not been provided to him. Dr. Shahidullah asserts that there is no doubt that the Board in fact recorded the entire two-day meeting and contends that there was clear evidence that a resolution and recommendation was read to him by Dr. Glenn from a handwritten document. He thus argues that the Committee has unjustifiably refused to produce the complete tape and the handwritten notes in question.

In response, the Committee argues that it has, in fact, complied with the Judge's Order of March 22, 1996. The Committee indicates that Dr. Shahidullah has been provided with a complete copy of the audio recordings that exist of the 1994 meeting. The Committee alleges that Committee members deliberated in private prior to the conclusion of the two-day meeting and that, when Dr. Shahidullah was called back into the room, the Committee members inadvertently forgot to turn on the tape recorder. The Committee contends that Dr. Shahidullah repeatedly has been informed that the tape recorder was inadvertently left off during a small portion of the conference and that, as a result, a portion of the discussion was not recorded. Thus, no tape recording was made of the remarks at issue. In addition, the Committee asserts that Dr. Shahidullah has been provided with all available notes of Dr. Glenn. Counsel for the Committee filed an affidavit indicating that Dr. Glenn has informed her that he has made attempts to locate his personal notes from the 1994 conference with Dr. Shahidullah, he does not have any such notes, and he believes that he threw the notes away a few days after the conference. The Committee further contends that Dr. Shahidullah should not be allowed to introduce evidence of prior settlement proposals pursuant to Rule 408 of the Minnesota Rules of Evidence.

The Administrative Law Judge concludes that Dr. Shahidullah has not borne his burden of establishing "prosecutorial misconduct" justifying dismissal of this matter based upon these allegations. The Committee has provided evidence that it has provided Dr. Shahidullah with all available tape recordings of the two-day meeting and all available handwritten notes of Dr. Glenn. Dr. Shahidullah has not made a convincing showing that the Committee willfully failed to record a portion of the meeting, gave him an inaccurate or doctored copy of the existing tape recording of the meeting, withheld any handwritten notes that exist, or otherwise committed misconduct that would justify dismissal of this matter. Accordingly, the Respondent's Motion to Dismiss is denied.

It appears that Dr. Shahidullah does not have a clear understanding of the relevance of the earlier settlement proposal that apparently was made in this matter. The primary issue in this hearing will be whether Dr. Shahidullah in fact committed violations of statutes and rules as alleged by the Committee. The Committee will have the burden of proving these alleged violations by a preponderance of the evidence. In contrast, Dr. Shahidullah will wish to provide evidence that will tend to contradict the specific charges that were made against him in the Notice of and Order for Hearing. Under Rule 408 of the Minnesota Rules of Evidence, "[e]vidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a

claim which was disputed as to either validity or amount, is not admissible to prove liability for and invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible." Thus, as a general matter, evidence that the Committee or Board made a proposal to settle its dispute with Dr. Shahidullah in 1994 will be inadmissible to prove that the Committee's current action to discipline Dr. Shahidullah's license is invalid or unwarranted. Evidence that complimentary statements were made about Dr. Shahidullah's practice during various discussions with the Committee or the Board and evidence tending to show that the tape recorder was intentionally turned off during such discussions may be pertinent to Dr. Shahidullah's apparent claim that the Committee is proceeding in bad faith or is unfairly enforcing its rules against him. However, the actual terms of settlement proposals that were made in 1994 are not admissible in this matter.

Respondent's Motion for Summary Disposition

Dr. Shahidullah also brought a Motion for Summary Disposition in this matter. It appears that the motion is based upon his contention that the Board knew that he went by the name of "Dr. Sam" for easy pronunciation, and that, as soon as the Board notified him of a problem with his doing so, he immediately notified his clients and prospective clients that he would be using his name as it appeared on his veterinary license for purposes of his practice. Dr. Shahidullah also bases the Motion for Summary Disposition upon his assertions that there have been only nine complaints filed against him in 18 years of veterinary practice and that all of the complaints were due to "lack of proper communication and misunderstanding." He contends that the Board reached the same conclusion. In addition, he alleges that there have been no complaints filed against him during the last two and one-half years, as a direct result of his improved communication skills. He alleges that counsel for the Committee has admitted that at least forty witnesses that she contacted regarding Dr. Shahidullah's competency and professional conduct gave comments favorable to Dr. Shahidullah. Finally, Dr. Shahidullah apparently contends that the Committee's disciplinary action stems from the fact that his mobile veterinary service is not as glamorous as the Board would like due to his socio-economic status.

In response, the Committee asserts that material facts remain in dispute in this matter and argues that summary judgment would be inappropriate. In particular, the Committee notes that the Board informed Dr. Shahidullah in a letter dated April 27, 1993, that practicing veterinary medicine under a false or assumed name is a violation of Minnesota Rules 9100.0007, subp. 1(F) and contends that, on May 15, 1993, Dr. Shahidullah nevertheless referred to himself as "Dr. Sam" to the owners of "Schnickers." See Notice of and Order for Hearing, ¶61. The Committee further asserts that it is seeking authorization for disciplinary action based upon violations of Board rules and statutes and maintains that Dr. Shahidullah is not relieved of his obligation to comply with applicable rules and statutes merely based upon a claim that the complaints made by pet owners were due to lack of proper communication and misunderstanding. The Committee further alleges that a complaint concerning Dr. Shahidullah was, in fact, made to the Board on June 30, 1995, and that, in any case, no statute of limitations applies to this proceeding. Finally, the Committee argues that the fact that witnesses called on Dr. Shahidullah's behalf are pleased with his services does not resolve the critical issue in this matter of whether or not he violated statutes or rules governing the conduct of veterinarians in Minnesota.

Summary disposition in the administrative equivalent to summary judgment. Minn. Rules 1400.5500(K) (1995). Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Louwagie v. Witco Chemical Corp., 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03. The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested cases. See Minn. Rules 1400.6600.

It is well established that, in order to successfully resist a motion for summary judgment, the non-moving party (here, the Committee) must show that specific facts are in dispute which have a bearing on the outcome of the case. Hunt v. IBM Mid-America Employees Federal Credit Union, 384 N.W.2d 853, 855 (Minn. 1986). To meet this burden, the party must offer "significant probative evidence" tending to support its claims. Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1988). The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial. Id. at 715 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)). The non-moving party has the benefit of that view of the evidence which is most favorable to him or her, and all doubts and inferences must be resolved against the moving party. See, e.g., Celotex, 477 U.S. at 325; Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988); Greaton v. Enich, 185 N.W.2d 876, 878 (Minn. 1971); Thompson v. Campbell, 845 F. Supp. 665, 672 (D. Minn. 1994).

The Committee has shown that specific facts are in dispute which have a bearing on the outcome of the case. Specifically, factual disputes exist concerning whether Dr. Shahidullah continued to use the name of "Dr. Sam" following notification by the Board that such a practice was a violation of the rules and whether any complaints have been received pertaining to Dr. Shahidullah in recent years. The further alleged grounds for summary disposition (Dr. Shahidullah's assertion that the complaints received were due to lack of proper communication and misunderstanding and his assertion that many witnesses have provided favorable comments about him) do not provide a sufficient basis upon which to order summary disposition of this matter. Even if all of these assertions were true, they would not require that judgment be entered as a matter of law in favor of Dr. Shahidullah. There is no requirement that complaints stemming from a lack of proper communication or misunderstanding be excused or disregarded if they involve conduct which appears to violate applicable statutes and rules. There also is no requirement that the Committee rely only on recent complaints in initiating an adverse licensing action, and no requirement that such adverse actions be dismissed if the licensee can produce other witnesses who will give testimony favorable to the licensee.

Accordingly, Dr. Shahidullah's Motion for Summary Disposition is denied.

Request to Hold One Day of Hearing in New Ulm

Dr. Shahidullah has requested that one day of hearing be held in New Ulm because approximately one dozen of his witnesses are farmers and it is now planting season, and because another one of his witnesses, Dr. Eckstein, also lives in New Ulm. The Committee

objects to holding the hearing in New Ulm because it would be costly for both parties. The Committee has indicated that it has no objection to Dr. Eckstein testifying by telephone.

The Committee's Motion to Exclude Witness Testimony is still pending. The outcome of the motion will hinge upon the Administrative Law Judge's analysis of the relevance of the testimony of the witnesses Dr. Shahidullah proposes to call in this matter. Dr. Shahidullah filed his Supplemental Witness List by facsimile transmission on May 20, 1996. The copy received by the Judge is very difficult to read. Dr. Shahidullah is directed to submit the original of the Supplemental Witness List or a more legible copy to the Judge by Friday, May 31, 1996. A copy of the submission must also be served on counsel for the Committee. Because the relevance of the witnesses Dr. Shahidullah proposes to call has not yet been evaluated, it would be premature to conclude that a dozen of the witnesses who will ultimately be called at the hearing reside in the New Ulm area. Moreover, based upon Dr. Shahidullah's May 20, 1996, Supplemental Witness List, it appears that Dr. Eckstein is expected to testify solely about "how the name Sam Ulland originated." If it is difficult for Dr. Eckstein to travel to Minneapolis for the hearing, it would seem appropriate to have him testify regarding this matter by telephone rather than requiring the parties to travel to his community to hear what would appear to be fairly limited testimony. Accordingly, Dr. Shahidullah's request to hold one day of hearing in New Ulm is denied at this time.

B.L.N